

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO on the)
relation of the State Engineer,)
and THE UNITED STATES OF)
AMERICA,)
)
Plaintiffs,)
)
v.) No. CIV 7941-BB
) RIO CHAMA STREAM SYSTEM
RAMON ARAGON et al.)
) Section 4: Rio El Rito
Defendants)
)
)

**DEFENDANT EL RITO COMMUNITY DITCH ASSOCIATION'S
MOTION FOR DECLARATION OF WATER ALLOCATION CUSTOMS**

COMES NOW the El Rito Community Ditch Association ("Association"), and pursuant to the Special Master's *Order Approving Proposal for Memorializing Water Allocation Customs* filed March 9, 2007 (No. 8603) and *Order Granting Motion of Time to File Motion for Declaration of Water Allocation Customs* (No. 8605), hereby moves this Court for adoption and entry of the Association's Declaration of Water Allocation Customs, which Declaration is attached as Exhibit A. In support of this motion, the Association would show the following:

1. The El Rito Community Ditch Association diverts water from the Rio El Rito at six separate points of diversion and distributes the water through eleven named ditches. From times predating the jurisdiction of the State of New Mexico, the Association and its members have practiced a community custom of water allocation known as the "tiempo" system.
2. New Mexico law at NMSA 1978, §72-9-2 (1907) provides that "[i]n all cases where local or community customs, . . . are in force," the local customs shall govern distribution of

water from ditches, laterals and irrigation systems to the person entitled to water and that such customs shall not be molested or changed.” NMSA 1978, §72-9-2 (1907). Furthermore, on January 7, 1999, this Court entered an *Order Granting Joint Motion for Adoption and Entry of Stipulation and Settlement Agreement* (No. 5838) between the State of New Mexico (“State”) and the Association in which the State stipulated and agreed that to the extent that community customs have been incorporated into the bylaws of a community ditch, such customs would govern the distribution of water from that community ditch.

3. This Court has the exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights with a stream system. NMSA 1978, §72-4-17 (1907).

4. The Community of El Rito is built around several placitas, and in 1864, the State Territorial Legislature passed a law consolidating the management of water for all the various acequias serving such placitas into management by two mayordomos. See “*An Act to Proportion to the Distribution of Water in Precinct Number Four, at El Rito, County of Rio Arriba,*” approved January 23, 1864, Laws of the Territory of New Mexico with the Joint Resolutions, passed by the Legislative Assembly at the Session of 1863-4 at pp. 36-39.

5. Through time, the management of the distribution of water to persons entitled to the use of water from the Rio El Rito and the various acequias comprising the El Rito Community Ditch Association has remained consolidated in one commission with two mayordomos.

6. On February 13, 1926, the three Ditch Commissioners of the Community of El Rito filed a Declaration of Water Right with the New Mexico State Engineer Office that included all the ditches under the jurisdiction of the Community of El Rito Community Ditch Association.

See Declaration No. 0491, "Declaration of Water Right," filed with the New Mexico State Engineer Office, February 13, 1926.

7. Since the inception of the community of El Rito, the water supply available for use from the Rio El Rito has often been insufficient in quantity to irrigate land within the community that would otherwise be irrigable. In order to allow for the most efficient use of the limited water supply and to allow for an equitable allocation of water among the member ditches, the community of El Rito has practiced a custom of water allocation known as the *tiempo* system.

8. Because continuing water supply shortages persist, one of the questions necessary for the adjudication of the rights to use water diverted from the Rio El Rito is the question of how water is shared and administered in times when there is insufficient water in the Rio El Rito to irrigate all irrigable land to which water would otherwise be delivered by the member ditches of the El Rito Community Ditch Association under the jurisdiction of the two mayordomos.

9. Pursuant to the *Order Approving Proposal for Memorializing Water Allocation Customs*, the El Rito Community Ditch Association is transmitting documentation supporting the *Declaration of the Tiempo Method of Water Allocation* to counsel for the State of New Mexico for review; the State of New Mexico shall announce its position regarding this motion at a time to be determined at the May 1, 2007 Status Conference with the Special Master.

10. The Court in its Order Approving Proposal for Memorializing Water Allocation Customs has approved the process outlined in El Rito Community Ditch Association's *Proposal for Memorializing Water Allocation Customs* (No. 8561), filed February 16, 2007, intended to lead to adoption and entry of the Declaration.

WHEREFORE, for the reasons stated above, the El Rito Community Ditch Association respectfully moves this Court for an order scheduling proceedings leading to adoption and entry

of the El Rito Community Ditch Association's *Declaration of the Tiempo Method of Water Allocation*, and for such other relief that this Court deems just and proper.

Respectfully submitted,

/s/ Mary E. Humphrey
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April 2007, I filed the foregoing document electronically through the CM/ECF system.

/s/ Mary E. Humphrey